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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,896	03/30/2006	Gregory Yelland	671096.404USPC	6246

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC  
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EXAMINER
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SZMAL, BRIAN SCOTT

ART UNIT	PAPER NUMBER
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3736

MAIL DATE	DELIVERY MODE
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02/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/541,896	YELLAND ET AL.	
	Examiner	Art Unit	
	Brian Szmal	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-25 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/16/09</u>   | 6) <input type="checkbox"/> Other: _____                          |

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mask comprising an image having a plurality of curved lines or parts thereof, as claimed in Claim 17, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

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2. Claim 15 is objected to because of the following informalities: In line 2, "a mask" should read as "the mask", since Claim 1 previously disclosed "a mask". Appropriate correction is required.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6, 7, 9, 11-15 and 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (2004/0002636 A1) in view of Roenker (5,801,810).

Teicher et al disclose a means for diagnosing akathisia and further disclose presenting a visual test stimulus to the user for a predetermined test stimulus exposure duration; measuring a response from the user, the response providing information about a response time taken for the user to respond; repeating the steps to develop a user profile; calculating for each predetermined test stimulus exposure duration, a representative error rate that represents a proportion of measured responses that are inaccurate; calculating the error rate comprises calculating a mean error for each response (the calculated percentage is a mean error rate); calculating a means response time for each stimulus duration; repetitions of the stimulus exposure are separated by a uniform time interval; one of two or more different stimuli are presented

to the user; and each of the test stimuli are presented an equal number of times. See Paragraphs 0022 and 0030.

Teicher et al however fail to disclose masking the test stimulus by placing a mask over or in place of the entire test stimulus; providing information about the user's perception of a characteristic of the test stimulus; comparing the user profile to a reference profile and assessing cognitive impairment or visual impairment of the user; repeating the stimulus exposures for a range of predetermined exposure durations; presenting a focal point stimulus to the user before presenting the visual test stimulus; the predetermined exposure duration is between 10 ms and 300 ms; the user has a choice of two different responses for responding to each test stimulus; a focal point presentation means for presenting a focal point stimulus to the user; and the mask has an image having a plurality of curved lines.

Roenker discloses a means for testing visual attention capabilities of a subject and further discloses masking the test stimulus by placing a mask over or in place of the entire test stimulus; providing information about the user's perception of a characteristic of the test stimulus; comparing the user profile to a reference profile and assessing cognitive impairment or visual impairment of the user; repeating the stimulus exposures for a range of predetermined exposure durations; presenting a focal point stimulus to the user before presenting the visual test stimulus; the predetermined exposure duration is between 10 ms and 300 ms; the user has a choice of two different responses for responding to each test stimulus; a focal point presentation means for presenting a focal

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point stimulus to the user; and the mask has an image having a plurality of curved lines.

See Column 4, lines 20-58; and Column 6, lines 20-54.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the means of Teicher et al to include the use of a mask and comparing the acquired results to a reference, as per the teachings of Roenker, since it would provide a means of controlling the test stimulus exposure to the test subject, to acquire an accurate means of determining the response time.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (2004/0002636 A1) and (5,801,810) as applied to claim 1 above, and further in view of Hongo et al (5,345,944).

Teicher et al and Roenker, as discussed above, provide a means for measuring responses to a visual stimulus and outputting the measurements, but fail to explicitly disclose an error rate curve chart representing the error rate.

Hongo et al disclose a means for medical diagnosis and further disclose an error rate curve chart representing the error rate. See Figure 11.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Teicher et al and Roenker to include the use of an error rate curve, as per the teachings of Hongo et al, since it would provide an alternative means of outputting the information for expert analysis.

6. Claims 8 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (2004/0002636 A1) and Roenker (5,801,810) as applied to claims 1 and 22 above, and further in view of Harrison et al (6,317,128 B1).

Teicher et al and Roenker, as discussed above, disclose a means for measuring responses to a visual stimulus and outputting the measurements but fail to explicitly disclose a response rate curve.

Harrison et al disclose a graphical user interface and further disclose the use of a response rate curve. See Figure 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Teicher et al and Roenker to include the use of a response rate curve, as per the teachings of Harrison et al, since it would provide an alternative means of outputting the information for expert analysis.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (2004/0002636 A1) and Roenker (5,801,810) as applied to claim 1 above, and further in view of Polat et al (6,876,758 B1).

Teicher et al and Roenker, as discussed above, disclose a means for measuring responses to a visual stimulus and comparing the results to a reference, but fail to disclose the reference profile is generated from data that are selected from the group consisting of data obtained from a reference group comprising cognitively normal individuals and data previously generated by the user.

Polat et al disclose a means for improving a user's visual perception and further disclose the reference profile is generated from data that are selected from the group consisting of data obtained from a reference group comprising cognitively normal individuals and data previously generated by the user. See Column 9, lines 22-30.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Teicher et al and Roenker to include the use of data obtained from a reference group comprising normal individuals, as per the teachings of Polat et al, since it would provide a means of comparison between the acquired results and results from normal people to determine if the user is suffering from any cognitive impairment.

8. Claims 1, 2, 3, 9-15 and 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) in view of Roenker (5,801,810).

Polat et al, as discussed above, disclose a means for improving a user's visual perception and further disclose presenting a visual test stimulus to the user for a predetermined test stimulus exposure duration; measuring a response from the user, the response providing information about the user's perception of a characteristic of the stimulus, and a response time taken for the user to respond; repeating the steps to develop a user profile; comparing the user profile to a reference profile; repeating the steps for a range of predetermined test stimulus exposure durations; the repetitions are separated by a uniform time interval; the reference profile is generated from data that are selected from the group consisting of data obtained from a reference group comprising cognitively normal individuals and data previously generated by the user; the user has a choice of two different responses for responding to each test stimulus; one of two or more different test stimuli are presented to the user; each of the test stimuli are presented to the user an equal number of times; and a processing means for



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processing the response from the user to develop a user profile. See Column 5, lines 3-7 and 21-23; Column 6, lines 1-17; Column 9, lines 22-30; and Column 12, lines 33-57.

Polat et al however fail to disclose masking the test stimulus by placing a mask over or in place of the entire visual test stimulus; presenting a focal point stimulus to the user before presenting the visual test stimulus to the user; the predetermined test stimulus exposure duration is between 10 ms and 300 ms; the mask comprises at least one curved line; and a focal point presentation means for presenting a focal point stimulus to the user.

Roemaker, as discussed above, discloses a means for testing visual attention capabilities of a person and further discloses masking the test stimulus by placing a mask over or in place of the entire visual test stimulus; presenting a focal point stimulus to the user before presenting the visual test stimulus to the user; the predetermined test stimulus exposure duration is between 10 ms and 300 ms; the mask comprises at least one curved line; and a focal point presentation means for presenting a focal point stimulus to the user. See Column 4, lines 20-58; and Column 6, lines 20-54.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the means of Polat et al to include the use of a mask, as per the teachings of Roemaker, since it would provide a means of controlling the test stimulus exposure to the test subject, to acquire an accurate means of determining the response time.

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9. Claims 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and Roenker (5,801,810) as applied to claim 1 above, and further in view of Teicher et al (2004/0002636 A1).

Polat et al and Roenker, as discussed above, disclose a means for assessing impairment of a user, but fail to disclose calculating for each stimulus exposure duration an error rate that represents a proportion of responses which are inaccurate; the error rate comprises calculating a mean error (the calculated percentage represents a mean error); and calculating a mean response time.

Teicher et al, as discussed above, disclose a means for diagnosing akathisia and further disclose calculating for each stimulus exposure duration an error rate that represents a proportion of responses which are inaccurate; the error rate comprises calculating a mean error (the calculated percentage represents a mean error); and calculating a mean response time. See Paragraphs 0022 and 0030.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and Roenker to include the calculation of a mean error rate, and a mean response time, as per the teachings of Teicher et al, since it would provide a means of determining the average error rate and response time for a plurality of test stimuli, to help diagnose visual or cognitive problems.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and Roenker (5,801,810) as applied to claim 1 above, and further in view of Hongo et al (5,345,944).

Polat et al and Roenker, as discussed above, disclose a means for assessing impairment of a user and providing an output, but fail to disclose an error rate curve.

Hongo et al, as discussed above, disclose a means for medical diagnosis and further disclose an error rate curve. See Figure 11.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and Roenker to include the use of an error rate curve, as per the teachings of Hongo et al, since it would provide an alternative means of outputting the acquired information regarding the error rate to an expert for analysis.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1), Roenker (5,801,810) and Teicher et al (2004/0002636 A1) as applied to claim 7 above, and further in view of Harrison et al (6,317,128 B1).

Polat et al, Roenker and Teicher et al, as discussed above, disclose a means for testing a user to provide a medical diagnosis but fail to disclose a response rate curve.

Harrison et al, as discussed above, disclose a graphical user interface and further disclose a response rate curve. See Figure 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al, Roenker and Teicher et al to include the use of a response rate curve, as per the teachings of Harrison et al, since it would provide an alternative means of outputting the acquired information regarding the response rate to an expert for analysis.

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12. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and Roenker (5,801,810) as applied to claim 1, 18 or 20 above, and further in view of Harrison et al (6,317,128 B1).

Polat et al and Roenker, as discussed above, disclose a means for testing a user to provide a medical diagnosis but fail to disclose a response rate curve.

Harrison et al, as discussed above, disclose a graphical user interface and further disclose a response rate curve. See Figure 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and Roenker to include the use of a response curve, as per the teachings of Harrison et al, since it would provide an alternative means of outputting the acquired information regarding the response to an expert for analysis.

#### *Allowable Subject Matter*

13. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

14. Applicant's arguments, filed December 5, 2008, with respect to the rejection(s) of claim(s) 1, 2, 4-6, 9, 10, 12-16, 18, 22, 24 and 25 under Polat et al and Hongo et al have been fully considered and are persuasive. Therefore, the rejection has been

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withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Teicher et al (2004/0002636 A1) and Roenker (5,801,810).

15. Applicant's arguments, with respect to the rejection(s) of claim(s) 3, 19, 21 and 23 under Polat and Hongo et al in view of Shekels have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Roenker (5,801,810).

16. Applicant's arguments, with respect to the rejection(s) of claim(s) 7, 8 and 11 under Polat et al and Hongo et al in view of Rootzen et al have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Teicher et al (2004/0002636 A1), Roenker (5,801,810) and Harrison et al (6,317,128 B1).

17. Applicant's arguments, with respect to the rejection(s) of claim(s) 17 under Polat et al and Hongo et al in view of Bachman et al have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Roenker (5,801,810).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmaj whose telephone number is (571)272-4733. The examiner can normally be reached on Monday-Friday, with second Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Brian Szmal/  
Examiner, Art Unit 3736